

COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD  
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9 VAC 5 CHAPTER 40.  
EXISTING SOURCES.

PART II.  
Emission Standards.

ARTICLE 52.  
Emission Standards for Stationary Sources Subject to  
Case-by-Case BART Determinations

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9 VAC 5-40-7550. Applicability and designation of affected facility.

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory federal class I area.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this article are the following:

1. Any BART-eligible source with the potential to emit less than 40 tons per year of SO<sub>2</sub> or NO<sub>x</sub>, or less than 15 tons per year of PM<sub>10</sub>.

2. Any existing stationary facility subject to the requirement under 9 VAC 5-4-52: 1

40-7580 to install, operate, and maintain BART for which the board has granted an exemption in accordance with 9 VAC 5-40-7560 or for which the administrator has granted an exemption under 40 CFR 51.303 with which the board concurs.

3. The provisions of this article do not apply to sources subject to Part IV (9 VAC 5-140-3010 et seq.) of 9 VAC 5-140 (Regulation for Emissions Trading).

9 VAC 5-40-7560. Exemptions from control.

A. Any existing stationary facility subject to the requirement to install, operate, and maintain BART may apply to the board for an exemption from that requirement. An application under this subsection shall include all available documentation relevant to the impact of the source's emissions on visibility in any mandatory federal class I area and a demonstration by the existing stationary facility that it does not or will not, by itself or in combination with other sources, emit any air pollutant that may be reasonably anticipated to cause or contribute to a significant impairment of visibility in any mandatory federal class I area.

B. Any fossil-fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption from BART only if the owner demonstrates to the satisfaction of the board that the power plant is located at such a distance from all mandatory federal class I areas that it does not or will not, by itself or in combination with other sources, emit any air pollutant that may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such mandatory federal class I area.

C. The existing stationary facility shall give prior written notice to all affected federal land managers of any application for exemption under this section. The federal land manager may provide an initial recommendation or comment on the disposition of such application. Such recommendation, where provided, must be part of the exemption application. This recommendation is not to be construed as the concurrence required under subsection D of this section. The board, within 90 days of receipt of an application for exemption from control, will provide notice of receipt of an exemption application and notice of opportunity for public hearing on the application. After notice and opportunity for public hearing, the board may grant or deny the exemption.

D. An exemption granted by the board will be effective only upon concurrence by all affected federal land managers and the administrator with the board's determination.

9 VAC 5-40-7570. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5-10 (General Definitions), unless otherwise required by context.

### C. Terms defined.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"BART-eligible source" means an existing stationary facility as defined in this subsection.

"Best Available Retrofit Technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation shall be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.

"Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

1. Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,
2. Coal cleaning plants (thermal dryers),
3. Kraft pulp mills,
4. Portland cement plants,
5. Primary zinc smelters,
6. Iron and steel mill plants,
7. Primary aluminum ore reduction plants,
8. Primary copper smelters,
9. Municipal incinerators capable of charging more than 250 tons of refuse per day,
10. Hydrofluoric, sulfuric, and nitric acid plants,
11. Petroleum refineries,

12. Lime plants,
13. Phosphate rock processing plants,
14. Coke oven batteries,
15. Sulfur recovery plants,
16. Carbon black plants (furnace process),
17. Primary lead smelters,
18. Fuel conversion plants,
19. Sintering plants,
20. Secondary metal production facilities,
21. Chemical process plants,
22. Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,
23. Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
24. Taconite ore processing facilities,
25. Glass fiber processing plants, and
26. Charcoal production facilities.

“Federal class I area” means any federal land that is classified or reclassified class I.

“Federal land manager” or “FLM” means the secretary of the department with authority over the federal class I area (or the secretary's designee).

“Federally enforceable” means all limitations and conditions that are enforceable by the administrator under the federal Clean Air Act including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, or 60.

“Fugitive emissions” means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

“In existence” means that the owner has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner, to undertake a program of construction of the facility to be completed in a reasonable time.

“In operation” means engaged in activity related to the primary design function of the source.

“Integral vista” means a view perceived from within the mandatory federal class I area of a specific landmark or panorama located outside the boundary of the mandatory federal class I area.

“Mandatory federal class I area” means any area identified in subpart D of 40 CFR Part 81.

“Potential to emit” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“Reasonably attributable” means attributable by visual observation or any other technique the board deems appropriate.

“Regional haze” means visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources.

“Secondary emissions” means emissions that occur as a result of the construction or operation of an existing stationary facility but do not come from the existing stationary facility. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the existing stationary facility.

“State operating permit” means a permit issued under the Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5-80 (Permits for Stationary Sources).

“State operating permit program” means the permit program established by and codified in Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5-80 (Permits for Stationary Sources).

“Visibility-impairing pollutants” means sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and particulate matter. PM<sub>10</sub> may be used as an indicator for particulate matter. Volatile organic compounds (VOCs) and ammonia and ammonia compounds may be considered to be visibility-impairing pollutants if the board determines that emissions of these pollutants may have an impact on visibility impairment in an area.

9 VAC 5-40-7580. Standard for regional haze pollutants.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any visibility-impairing pollutants in excess of emission limitations representing BART, as reflected in any term or condition that may be placed upon a permit for the facility.

B. State operating permits may be issued at the discretion of the board containing such terms and conditions, including schedules for compliance, as may be necessary to implement a BART determination under 9 VAC 5-40-7590 for the emissions of any visibility-impairing pollutant that may be emitted from the affected facility.

C. A permit may be issued under subsection B of this section regardless of any other permits in force provided that it does not contravene any more restrictive provision of any of the other permits.

9 VAC 5-40-7590. Criteria and procedures for making BART determinations.

The criteria and procedures for making BART determinations shall be as follows.

1. The determination of BART shall be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART. In this analysis, the board will take into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source, and the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.

2. The determination of BART for fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts shall be made pursuant to the guidelines in Appendix Y of 40 CFR Part 51 (see 9 VAC 5-20-21).

3. If the board determines in establishing BART that technological or economic limitations on the applicability of measurement methodology to a particular source would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means that achieve equivalent results.

4. Each source subject to BART shall install and operate BART as expeditiously as practicable, but in no event later than August 1, 2012.

5. Each source subject to BART shall maintain the control equipment required by this article and establish procedures to ensure such equipment is properly operated and maintained.

9 VAC 5-40-7600. Standard for visible emissions.

The provisions of Article 1 (9 VAC 5-40-60 et seq.) of this part apply.

9 VAC 5-40-7610. Standard for fugitive dust/emissions.

The provisions of Article 1 (9 VAC 5-40-60 et seq.) of this part apply.

9 VAC 5-40-7620. Standard for odor.

The provisions of Article 2 (9 VAC 5-40-130 et seq.) of this part apply.

9 VAC 5-40-7630. Standard for toxic pollutants.

The provisions of Article 4 (9 VAC 5-60-200 et seq.) of Part II of 9 VAC 5-60 (Hazardous Air Pollutant Sources) apply.

9 VAC 5-40-7640. Compliance.

The provisions of 9 VAC 5-40-20 (Compliance) apply.

9 VAC 5-40-7650. Compliance schedules.

A. Owners shall comply with the emission standards in this article as expeditiously as possible but in no event later than August 1, 2012.

B. Owners of affected facilities shall comply with the provisions of subsection A of this section by adhering to the increments of progress contained in a permit issued under 9 VAC 5-30-7580 B.

9 VAC 5-40-7660. Test methods and procedures.

The provisions of 9 VAC 5-40-30 (Emission testing) apply.

9 VAC 5-40-7670. Monitoring.

The provisions of 9 VAC 5-40-40 (Monitoring) apply.

9 VAC 5-40-7680. Notification, records and reporting.

The provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.

9 VAC 5-40-7690. Registration.

The provisions of 9 VAC 5-20-160 (Registration) apply.

9 VAC 5-40-7700. Facility and control equipment maintenance or malfunction.

The provisions of 9 VAC 5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9 VAC 5-40-7710. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5-50 (New and Modified Sources) and 9 VAC 5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (re-startup) of a facility.
6. Operation of a facility.

#### HISTORICAL NOTES:

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